IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1497 OF 2007

Sadashiv Namdeo Phalak..... ....Petitioner
V/s
Kusum Dinkar Gajare..... ....Respondent.

Mr.S.S.Kanetkar, Adv. For the petitioner.

Smt.Vaishali R. Bhilareand & Mr.Sudama Patil, Adv. For the respondent.

CORAM: A.P.DESHPANDE, J.
21/8/07

PC:

Rule. Rule made returnable forthwith.

Taken up for final hearing by consent of parties.

The respondent is the original plaintiff who is mother-in-law of the present petitioner. The petitioner was married to the daughter of respondent by name Viday in the year 1986. The petitioner' swife expired on 2.2.95. On 30.6.95 respondent filed an application under section 276 of the Indian Succession Act in the Court of Civil Judge, Senior Division, Pune being Probate Petition No.413/95. The respondent-plaintiff pleaded that the deceased Viday left behind her last will dated 31.12.90 where under she bequeathed a flat and golden ornaments owned by her in favour of the plaintiff. The probate petition was contested by the petitioner and thus the same was converted into Regular Civil Suit No.296/97. The petitioner filed his written statement below Ex.8 and issues came to be framed. The present petitioner filed an application for amendment of the written statement at Ex.52. The amendment application came to be allowed. In the first place it is the

case of the petitioner that it is he who had purchased the property viz. Flat in question by paying consideration but the flat was purchased in the name of Vidya. By an amendment effected to the written statement it is pleaded that the relations of Vidya with her mother were strained and hence it was improbable for Viday to execute a will in favour of her mother.

2. As per the amended written statement additional issue came to be framed touching the case of the petitioner about relations of Viday not being cordial and being strained with her mother the plaintiff. The petitioner filed an application under order 16 rule 6 of Civil Procedure Code for calling the documents which were already placed on the file of Sessions Court, Pune in criminal case No.257/04 which is pending. The said criminal case is in between the same parties. By filing the said application the petitioner had prayed for issuance of summons to the clerk of the Sessions Court, Pune for production of documents. The documents referred to in the said application are the original receipts under which the petitioner claims to have paid the consideration to M/s.Ketki Constructions. The said receipts have been exhibited as the plaintiff did not object to the exhibiting of the said receipts. The other documents which the petitioner wants to prove are original letter written by the deceased Vidya which has been filed at Ex.225 in the said criminal proceedings. Yet again an original letter marked `A' and copies at Ex.258 and 259 produced in the criminal proceedings being statement of accounts of Sadashiv Namdeo Phalak of Bhusawal Peoples' Cooperative Bank of saving bank account No.10485 and Union Bank of India saving bank account No.6075.

3. The application filed by the petitioner to issue summons to the clerk of Sessions Court for production of said documents has been rejected and aggrieved thereby the present writ petition has been filed.

The application was opposed on the ground that the application has been filed with a view to prolong the mater and that the documents are not relevant to decide the matter in issue. Specific additional issue is framed by the Court touching the plea of the present petitioner that the relations of the defendant Viday with her mother were strained and hence it was improbable for her to execute a will in favour of her mother. Without any valid reason the trial Court has rejected the application. The Court has observed that the letters in question are not posted. The trial Court has illegally held that it is not relevant as to who paid the amount of disputed property. An issue in that regard is already framed. Copies of the documents are already placed on record and the petitioner wants to prove the documents by calling for the original by summoning the clerk of the Sessions Court, Pune as a witness. The trial Court has also erred in holding that summoning of the documents would cause prejudice to the plaintiff. The Court has yet again wrongly held that this is not the stage for production of the documents. It is only after the evidence of the plaintiff is over that the defendant would be proving the documents filed by him on record and with a view to prove the documents he had moved the application under order 16 rule 6. I do not see any justification for the trial Court to have rejected the application moved by the petitioner. If the relevant documents are not brought before the Court it is the present petitioner who would likely suffer irreparable loss, hardship in as much as it will not be possible for him to establish his case that the flat in question had been purchased by him from and out of his own funds but in the name of the deceased Viday and that the will is not legal. Relevant circumstances need to be brought on record by the petitioner such as the relations of the deceased with her mother being strained and hence it was highly improbable for her to have executed a will in favour of her mother bequeathing the property.

When issues are already framed touching these aspects to decline the petitioner's request for production of documents which are already filed on record in another case would result in miscarriage of justice. As in my view, trial Court has committed patent illegality in rejecting the application moved by the petitioner the present petition deserves to be allowed and I proceed to allow the same. Writ petition is allowed. The impugned order is quashed and set aside. The application moved by the petitioner/defendant under order 16 rule 6 is allowed. Rule made absolute in above terms.

21/8/07